

REMARKS/ARGUMENTS

Applicants appreciate the Examiner's decision to reopen prosecution in view of the appeal brief filed January 31, 2005. Applicants hereby reply to the non-final Office Action of April 20, 2005 under 37 C.F.R. §1.111.

Claims 1-22 currently stand rejected under 35 U.S.C. §103(a) as being unpatentable over Frison et al ("Frison," U.S. Patent No. 6,049,789) in view of Guheen et al ("Guheen," U.S. Patent Application Publication No. 2004/0107125). Applicants respectfully traverse this rejection.

The invention is a method and system that improves computer software job accounting and software chargeback functions, for example, at computer data centers. More particularly, the invention combines the functionality of a job accounting and chargeback subsystem (JACS), a license manager and a job accounting and software use intercoupling facility that interouples use information provided by the license manager subsystem with chargeback data provided by the JACS.

The software license manager component includes a product use monitoring subsystem that handles requests for and grants rights to the use of licensed software products. The software license manager further develops software product use information. The use of software products to which the product use information relates requires payment of specified license fees to one or more licensors.

In accordance with applicants' claim 1, the JACS subsystem develops "chargeback data." The chargeback data is applicable to "charged entities" that are separate of and unrelated to the licensors and to the specified license fees, and the JACS system allocates license fees in accordance with predefined criteria based on the charge entities' utilization of software or computer facilities.

The job accounting and software use intercoupling facility provides software- product chargeback information by intercoupling the software product use information (provided by the software license manager) and the chargeback data (provided by the JACS subsystem). Thus, the combination improves computer software job accounting and chargeback functionality.

The combination of Frison and Guheen, respectfully, does not teach or suggest these crucial elements applicants' in claim 1. With respect to these elements of claim 1, the Examiner

has referred the applicants to the abstract, Fig. 1, 2 and 7, and column 1, lines 48-61, and column 2, lines 50-column 4, line 46 of Frison. Respectfully, careful study of the portions of Frison relied upon shows that this reference contains structural differences and is functionally, as well, different from the claimed invention.

In Frison, a pay-per-use “PPU licensing system” 100 comprises a conventional prior art license management system, as described in the background section of the written specification in applicants’ pending patent application. For example, Frison’s PPU licensing management system 100 measures software usage in order to grant pay-per-use licenses for software applications. The PPU licensing management system collects usage information and reports the information in order to grant licenses for the use of software products. One module, billing module 308, operates to process the stored usage data to generate usage reports 312 and/or invoices 314 for the licensees. (see column 4, lines 62-column 5, line 19). Unlike applicants’ claim 1, the licensing management system taught by Frison operates as a typical prior art license management system to generate usage information by licensees to grant licenses and report the state of licenses usage to licensors.

Applicants respectfully disagree with the Examiner’s assertion that the job accounting and chargeback subsystem (JACS) of applicants’ claim 1 is taught by Frison (Frison’s billing system 308). As noted above, the JACS creates chargeback data which, as defined in applicants’ specification, allocates the cost of a particular product to different departments within a party or a user that has purchased the right to use a particular software product. Frison does not teach or suggest a subsystem that develops chargeback data that is applicable to charged entities that are separate of and unrelated to the software product licensors and to the specified license fees. In fact, Frison is silent with respect to the “charged entities” defined in applicants’ claim 1.

Further, applicants respectfully disagree with the Examiner’s assertion that Frison teaches applicants’ claim 1 job accounting and software use intercoupling facility that interouples software product use information with the chargeback data in a manner that provides software-product chargeback information. This feature of applicants’ claim 1 interouples use information provided by the software license manager with the chargeback data provided by the JACS is not shown anywhere in Frison. The intercoupling facility provides software-product chargeback information, for example, based upon resource usage, the cost of a software product, the details

of the software product's license, and is preferably organized according to the software product for which the data are obtained (see, for example, applicants' specification, pages 16-18).

Applicants respectfully submit that the structure defined in applicants' claim 1 is patentably distinct from the software paper use licensing system of Frison. In applicants' claim 1, the software license manager develops software product use information which is communicated to the JACS for developing chargeback information for charged entities, which is further intercoupled by the job accounting and software use intercoupling facility to provide the software-product chargeback information. Such structure and functionality is taught or suggested by Frison.

The Examiner cites to Guheen for teaching applicants' claim 1 product use monitoring subsystems that is comprised in applicants' claim 1 software license manager. Applicant respectfully submits that the teachings of Guheen do not provide the elements of applicants' claim 1 that are missing from the teachings of Frison. In addition to the product use monitoring subsystem, Guheen does not teach or suggest applicants' job accounting and chargeback subsystem (JACS), nor applicants' claim 1 accounting and software use intercoupling facility.

Guheen is directed to identifying alliances among a plurality of business entities, providing a pictorial representation of a current network framework and components, and conveying by indicia the components of the current network framework in which the alliances exist (see paragraphs 8, 110-112, and Fig. 1). Applicants have reviewed the four isolated passages in the (literally) thousands of paragraphs written in Guheen and submit that Guheen does not teach or suggest applicants' claim 1 product use monitoring subsystem. Although the passages in Guheen cited by the Examiner make minor mentioning of license management (paragraph 2324), billing and accounting chargeback (paragraph 2391), ensuring that license agreements are not violated (paragraphs 2759-2760) and release tests covering full business cycle (paragraph 2860), applicants respectfully submit that Guheen is technologically very different from applicants' claim 1, and does not teach or suggest the elements of applicants' claim 1 that are missing from the teachings of Frison. Moreover, applicants submit that one skilled in the art would not be motivated to combine Frison with Guheen as the Examiner has done because the identifying business alliances in a web architecture (Guheen) is completely different from Frison's pay per use licensing system.

Even, assuming for the sake of argument, that one were to combine the teachings of Frison with Guheen, applicants' claim 1 still would not be taught because crucial elements of claim 1 are not taught or suggested by the combination of the references. Therefore, applicants' claim 1 is patentable over the combination of Frison and Guheen.

Claims 2-22 depend directly or indirectly from claim and, therefore, are patentable for the same reasons, because they include features which in combination with the claim(s) from which they depend are not taught, suggested or disclosed by Frison.

Reconsideration of the application is respectfully requested and passage of the claims to issuance.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on July 20, 2005:


Max Moskowitz
Name of applicant, assignee or
Registered Representative

Signature

July 20, 2005
Date of Signature

MM:JJF:ck

Respectfully submitted,



Max Moskowitz
Registration No.: 30,576
OSTROLENK, FABER, GERB & SOFFEN, LLP
1180 Avenue of the Americas
New York, New York 10036-8403
Telephone: (212) 382-0700